

REMARKS

Applicants thank the examiner for the interview with the undersigned held October 30, 2007.

Double Patenting Rejection

Claims 1-33 were provisionally rejected because of obviousness-type double patenting over certain claims of copending, co-owned application Serial No. 10/679,071 (“the ‘071 application”). The claims of both the present application and the ‘071 application are currently rejected on other grounds in addition to the nonstatutory obviousness-type double patenting rejection. Therefore, applicants request that the double patenting rejection be held in abeyance until it is the only rejection in either of the applications. *See* MPEP § 804.

Section 102 Rejections

In the Office Action, claims 1-33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by published U.S. patent application U.S. Pub. No. 2006/0218069 to Aberman et al. In response, claims 27-32 have been canceled; claim 33 has been amended to correct a grammatical error; and claims 34-51 have been added as new claims. Applicants traverse the rejections as follows.

Claim 1 is directed to a financial unit that comprises a fixed income security and a separable forward purchase contract. The forward purchase contract “obligates the issuer of the unit to pay a purchaser of the unit a forward purchase contract payment at issuance of the unit.”

Aberman involves a real estate investment trust (“REIT”) which “issues shares of preferred stock, each of which is associated with either a forward purchase contract...or a warrant.” *See* Aberman at Abstract. In Aberman, however, the forward purchase contract does

not obligate the issuer to make a forward purchase contract payment to the time of issuance of the unit.

The Office identified paragraph [0031] of Aberman as disclosing that “the forward purchase contract further obligates the issuer of the unit to pay a purchaser of the unit a forward purchase contract payment at issuance of the unit.” *See* Office Action at ¶ 6, p. 4. The Office states that “where issuer pays to purchaser at some future time which Examiner interprets could be quarterly or semi-annually.” *See id.* The Office appears to have misread claim 1 of the present invention or paragraph [0031] of Aberman. Claim 1 requires the issuer to pay the forward purchase contract payment at the time of issuance, not at some future, post-issuance time. Neither paragraph [0031] nor the written description of Aberman disclose this feature of claim 1.

Paragraph [0031] of Aberman states:

Forward contract. – A “forward contract” is a contract in which a party promises to pay something of value at some future time. A typical forward contract used in connection with the invention is a contract obligating the holder of the contract to purchase, and obligates the entity to sell, on a particular date, for a specified price, a number of newly issued common stock of the entity according to a formula. The formula may be fixed at the outset or may vary over the life of the security.

Nowhere in paragraph [0031], or anywhere else in Aberman, is it disclosed that “the forward purchase contract further obligates the issuer of the unit to pay a purchaser of the unit a forward purchase contract payment at issuance of the unit.”

Aberman fails to disclose at least this element of claim 1 and, therefore, does not anticipate claim 1. Also, by definition, dependent claims 2-9 are also not anticipated by Aberman.

Each of independent claims 10, 33, 34 and 43 are not anticipated by Aberman for at least reasons analogous to those described above with regard to claim 1. Furthermore, dependent claims 11-26 and 35-51 are also not anticipated by Aberman.

Section 103 Rejections

Applicants have canceled claims 27-32 thus rendering a discussion of the rejections under 35 U.S.C. §103(a) as moot.

CONCLUSION

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present Response should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicant reserves the right to specifically address all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant has made a diligent effort to properly respond to the Office Action and believes that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



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